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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

J.J., individually; and AMANDA JACKSON
individually,

Plaintiffs,

vs.

OLYMPIA SCHOOL DISTRICT, a public
corporation,

Defendant.

NO. 3:16-cv-05060

COMPLAINT FOR DAMAGES

Demand for Jury Trial

COMES NOW Plaintiffs, by and through their attorneys Darrell L. Cochran and Kevin M. Hastings, and the law firm of Pfau Cochran Vertetis Amala PLLC, to bring a cause of action against Defendants, and allege the following:

I. INTRODUCTION

1. Between 2010 and 2012, a hazing ritual known as “BNDing” was rampant within the student athlete circles at the Olympia School District. Its origin is unclear but the hazing ritual consists of one student sticking his fingers up the anus of another student.

COMPLAINT FOR DAMAGES

2. Students have provided statements and testimony about their experience with being victims of this BND hazing. One student said that it “happened multiple times by multiple people,” in the locker room and at sporting camps. It was a “very common occurrence” that “happened a lot.” The District had a “culture” of BND activity that has been described by students as older classmen hazing younger classmen.

3. The legend of BND hazing was equally pervasive, and students reported hearing about the hazing ritual as rumors spread throughout. One student has said that BNDing “was well known,” particularly among student athletes. And sometime as early as the fall of 2010, a Facebook “BND” page had been created where those who were “next” would be identified in a status update.

4. The BND hazing culture was highly disruptive to District students’ educational pursuits. Either they harbored feelings of humiliation from being a BND hazing victim, having had their anus violated by another student, or they were living in constant fear and apprehension that they were next. One boy, attacked in the BND hazing ritual at a basketball camp held at Western Washington University, left the District to attend a different high school even though his father remained to coach and his older brother remained to continue as a student athlete. J.J. suffered the humiliation, the fear and the alienation when he stood up to the hazing and reported it.

5. The District cannot allow hazing to occur, either by turning a blind eye to a sports “rite of passage” or because they fail to supervise their students. This lawsuit seeks to impose responsibility on the District for failing to supervise the students and compensation for the damages caused as a result.

II. PARTIES

1. J.J., a minor when he was hazed and abused, was at all relevant times a student enrolled in the Olympia School District, Thurston County, Washington, under compulsion of the laws of the state of Washington, including but not limited to RCW 28A.225 et seq.

1 Plaintiff J.J.'s name is abbreviated to protect him as an abuse victim given the private nature
2 of the allegations contained in this complaint. He currently resides in Florida.

3 2. Plaintiff Amanda Jackson is J.J.'s mother and was at all relevant times a
4 resident of Thurston County, Washington. She currently resides in Texas.

5 3. Defendant Olympia School District (the "District") is a public corporation
6 organized under the laws of the State of Washington and is authorized to be sued in such
7 corporate capacity for its acts and those of its agents and employees. Defendant has its
8 primary place of business in Thurston County, Washington, and is subject to the provisions of
9 Title 28A of the Revised Code of Washington. At all times material, Defendant Olympia
10 School District operated, and otherwise exercised control over, the public schools within the
11 Olympia School District, including Jefferson Middle and Capital High School, for the benefit
12 of the school-aged children residing in Olympia School District. Jefferson Middle and
13 Capital High School are a public schools operated by Defendant Olympia School District and
14 as such, Defendant Olympia School District is responsible for all conduct of agents and
15 employees of the Olympia School District with respect to the attendance of J.J. at the school.

16 4. At all relevant times, Defendant Olympia School District had supervision and
17 control of J.J. in loco parentis.

18 **III. JURISDICTION AND VENUE**

19 5. This Court has subject matter jurisdiction over this case under 28 U.S.C. §
20 1331, which gives district courts jurisdiction over all civil actions arising under the
21 Constitution, laws, and treaties of the United States.

22 6. This Court has diversity jurisdiction over this action under 28 U.S.C. §
23 1332(a)(1). At least one Plaintiff and Defendant are citizens of different states, and the
24 amount in controversy exceeds \$75,000.00.

25 7. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1343,
26 which gives district courts original jurisdiction over (a) any civil action authorized by law to

1 be brought by any person to redress the deprivation, under color of any State Law, statute,
 2 ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the
 3 Constitution of the United States or by any Act of Congress providing for equal rights of
 4 citizens or of all persons within the jurisdiction of the United States; and (b) any civil action
 5 to recover damages or to secure equitable relief under any Act of Congress providing for the
 6 protection of the civil rights.

7 8. Plaintiff brings this action to redress a hostile educational environment
 8 pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), as more
 9 fully set forth herein.

10 9. This is also an action to redress the deprivation of Plaintiff's constitutional
 11 rights under the Fourteenth Amendment of the United States Constitution pursuant to 42
 12 U.S.C. § 1983.

13 10. Venue is proper in this district under 28 U.S.C. § 1391(b), since all defendants
 14 reside or resided in this district and the events giving rise to the claims occurred in this
 15 district.

16 IV. FACTS

17 11. In the summer of 2010, the Capital High School basketball team invited J.J. to
 18 participate in a summer league camp in Seaside, Oregon. J.J. had just finished eighth grade
 19 and was going into ninth grade that fall. It was not unusual for teams to invite younger players
 20 to attend and participate in summer basketball camps. The Capital High School coaches
 21 invited J.J. to the camp because he is a talented basketball player.

22 12. One evening of the camp, the coaches left the hotel where the team was staying
 23 to drink beer at the local pub. Left unsupervised by coaches, several members of the
 24 basketball team approached J.J., pinned him down, and physically assaulted him. J.J. had just
 25 taken a shower and was still in his towel at the time. The physical assault included the digital
 26 penetration of his anus. J.J. pleaded with the players to stop, but the assault continued for

1 some time. J.J. was in that position because the coaching staff at Capital High School failed to
2 provide adequate supervision.

3 13. Two years later, in June, 2012, J.J. participated in another summer camp with
4 the Capital High School team at Western Washington University (“WWU”) in Bellingham.
5 Thirty-two players and five coaches from the high school attended. The students and coaches
6 stayed in one of the dorms on campus.

7 14. While be driven by parents to the WWU camp in Bellingham, the BND hazing
8 rituals were discussed among some students. Shortly after the student athletes arrived at
9 WWU, Coach Doug Galloway held a meeting on a lawn with them and said they were not to
10 haze any freshman. Players understood that this conversation was in reference to the BND
11 hazing rituals, as rumors had been circulating about it. The rumors were even posted on
12 various social media, where as early as the fall of 2010, a BND Facebook page was created to
13 identify who was the “next” victim in the BND hazing ritual.

14 15. On Friday night, June 29, 2012, four of the Capital High School coaches
15 planned to attend a coaches’ “social” at a restaurant off campus. Investigation reports indicate
16 the “social” consisted of in large part, beer drinking at a local pub. The fifth coach, Kraig
17 Lathrop, had left earlier in the evening to meet a friend for dinner. As the four coaches left the
18 dorm to head to the social, Doug Galloway left two of the varsity players in charge.

19 16. Later that evening and unsupervised by coaches, several players were gathered
20 in one of the dorm rooms when one of the players said something like “Let’s go get the
21 freshman.” They went to the freshman’s room, knocked on the door, and were let in. At that
22 point, several of the players jumped on the younger boys and physically assaulted them. J.J.
23 tried to protect the younger students from the physical assault including the digital penetration
24 of a young boy’s anus. J.J. was next, and he was again digitally assaulted in his anus. J.J.
25 was in that position during the Bellingham camp because the coaching staff failed to
26 supervise despite the danger of ritualistic hazing and bullying behavior.

1 17. At the time of the assault, only one of the Capital High School coaching staff,
2 Kraig Lathrop, was present in the dorm. He had returned from dinner with his friend and was
3 in his room on the second floor (the freshman's room was on the first floor) when the assault
4 took place. He heard the noise created by the players when they stormed the freshman's room
5 but did not go check to see what happened.

6 18. Head coach Doug Galloway and the other coaches learned about the assault the
7 next morning. An investigation ensued. During the course of that investigation, several
8 students disclosed that they had heard of, or been a victim of, similar incidents of assault
9 including digital penetration of the anus. Several students disclosed that this occurred up to
10 two years prior to the assault at the Bellingham camp. Most of the players interviewed were
11 familiar with the act of digitally penetrating another person's anus and said that it was known
12 as "BND-ing". One player told an investigator that "BND-ing" is a way of "putting people in
13 their place." Another said it usually involved "junior varsity players on freshman." Other
14 students said that "BND-ing" was "traditional" and that it happened as part of the basketball
15 and football programs at Capital High School.

16 19. "BNDing" was rampant within the student athlete circles at the Olympia
17 School District for years before and during the relevant time periods to this lawsuit. It was a
18 hazing culture.

19 20. There were several other victims of the BND hazing ritual. One student said
20 that it "happened multiple times by multiple people," in the locker room and at sporting
21 camps. It was a "very common occurrence" that "happened a lot."

22 21. The legend of BND hazing was equally pervasive, and students reported
23 hearing about the hazing ritual as rumors spread throughout. One student has said that
24 BNDing "was well known," particularly among student athletes.

25 22. In fact, before the basketball camp at Western Washington University, the
26 coaches held a meeting to specifically tell students

1 23. The BND hazing culture was highly disruptive to District students' educational
2 pursuits. Either they harbored feelings of humiliation from being a BND hazing victim,
3 having had their anus violated by another student, or they were living in constant fear and
4 apprehension that they were next. One boy, attacked in the BND hazing ritual at a basketball
5 camp held at WWU, left the District to attend a different high school even though his father
6 remained to coach and his older brother remained to continue as a student athlete.

7 24. J.J. suffered the humiliation, the fear and the alienation when he stood up to the
8 hazing and reported it. He and his mother were both alienated and isolated by the school
9 community who supported the basketball coach despite his failure to properly supervise
10 students and prevent the very type of hazing that was known or should have been known
11 about by school officials.

12 25. At all material times, the School District was receiving federal funding, as
13 contemplated by Title IX, 20 U.S.C. § 1681, et seq.

14 26. The School District implemented and executed policies and customs in regard
15 to the events that resulted in the deprivation of Plaintiff's constitutional, statutory, and
16 common-law rights.

17 27. The School District is responsible for ensuring that all its employees are
18 properly trained and supervised to perform their jobs.

19 28. The School District is responsible for the acts and omissions of its employees.

20 **V. CAUSES OF ACTION**

21 **COUNT I** 22 **VIOLATION OF TITLE IX** 23 **AS TO DEFENDANT OLYMPIA SCHOOL DISTRICT** 24 **(20 U.S.C. § 1681, et seq.)**

25 29. Plaintiffs re-allege the paragraphs set forth above.
26

1 30. The sex-based harassment articulated above was so severe, pervasive, and
2 objectively offensive that it deprived Plaintiff of access to educational opportunities or
3 benefits provided by the school.

4 31. The Defendant School District created and/or subjected Plaintiff to a hostile
5 educational environment in violation of Title IX of the Education Amendments of 1972, 20
6 U.S.C. § 1681(a) (“Title IX”), because

- 7 a) Plaintiff was a member of a protected class;
8 b) He was subjected to sexual harassment in the form of a sexual assault;
9 c) He was subjected to harassment based on his sex; and
10 d) He was subjected to a hostile educational environment created by the School
11 District’s lack of policies and procedures and failure to properly investigate
12 and/or address the sexual assault and subsequent harassment.

13 32. Defendant School District and its officials had actual knowledge of the sexual
14 assault and the resulting harassment of Plaintiff created by its failure to investigate and
15 discipline Plaintiff’s attacker(s) in a timely manner and consistent with its own policy and
16 federal and state law.

17 33. The Defendant School District’s failure to promptly and appropriately respond
18 to the alleged sexual harassment, resulted in Plaintiff, on the basis of his sex, being excluded
19 from participation in, being denied the benefits of, and being subjected to discrimination in
20 the District’s education program in violation of Title IX.

21 34. Defendant School District failed to take immediate, effective remedial steps to
22 resolve the sexual harassment and instead acted with deliberate indifference toward Plaintiff
23 and other similarly situated students.

24 35. Defendant School District persisted in its actions and inaction even after it had
25 actual knowledge of the harm suffered by Plaintiff.

26 36. Plaintiff has suffered emotional distress and psychological damage, and his
character and standing in his community have suffered from the harassment fostered as a

1 direct and proximate result of Defendant School District's deliberate indifference to his rights
2 under Title IX.

3 **COUNT II**
4 **VIOLATION OF § 1983**
5 **AS TO DEFENDANT OLYMPIA SCHOOL DISTRICT**
6 **(42 U.S.C. § 1983)**

7 5.1 Plaintiffs re-allege the paragraphs set forth above.

8 37. Under the Fourteenth Amendment, Plaintiff had the right as a public school
9 student to personal security and bodily integrity and Equal Protection of Laws.

10 38. Defendant School District was acting under the color of state law at all relevant
11 times.

12 39. Defendant Plaintiff to violations of his right to personal security and bodily
13 integrity and Equal Protection of Laws by: failing to investigate sexual misconduct; failing to
14 appropriately discipline; failing to adequately train and supervise the assailants; and
15 manifesting deliberate indifference to the sexual assault and ongoing harassment of Plaintiff
16 by other students.

17 40. The School District has and/or had unconstitutional customs or policies of a)
18 failing to investigate evidence of criminal and tortious misconduct against School District
19 students in the nature of violations of their right to personal security and bodily integrity and
20 b) failing to adequately train and supervise School District employees with regard to
21 maintaining, preserving and protecting students from violations of their right to personal
22 security, bodily integrity, and Equal Protection of the Laws.

23 41. On information and belief, the School District has followed these
24 unconstitutional customs and policies not only with regard to Plaintiff but also with regard to
25 criminal and tortious misconduct committed against other School District students.

26 42. Plaintiff has suffered emotional distress and psychological damage, and his
character and standing in her community have suffered from the harassment fostered as a

direct and proximate result of Defendant's deliberate indifference to his rights under the Fourteenth Amendment.

COUNT III
MONELL LIABILITY FOR FAILURE TO TRAIN AND SUPERVISE
AS TO RESPONSE TO SEXUAL ASSAULT
AS TO DEFENDANT OLYMPIA SCHOOL DISTRICT
(42 U.S.C. § 1983)

5.1 Plaintiffs re-allege the paragraphs set forth above.

43. Defendant School District was a federally funded school system and "state actor."

44. Defendant School District acted under color of law when failing to supervise, monitor, and respond to Plaintiff's sexual assault.

45. Defendant School District failed to preserve Plaintiff's constitutional right to equal protection as guaranteed by the Fourteenth Amendment.

46. Under the Equal Protection Clause of the Fourteenth Amendment, Plaintiff had the right to equal access to an educational environment free from harassment and discrimination.

47. Defendant School District should have known that its supervision, monitoring, and response to the sexual assault allegations must comply with federal law.

48. Defendant School District violated Plaintiff's right to equal access by:

a. Failing to take immediate and appropriate action to investigate or otherwise determine what occurred once it knew or should have known about possible sexual violence;

b. Failing to take prompt and effective steps to end the sexual violence, prevent its recurrence, and address its effects;

c. Failing to take steps to protect the Plaintiff as necessary, including interim steps taken prior to the final outcome of the investigation;

d. Failing to provide a grievance procedure for students to file complaints of sexual discrimination, including complaints of sexual misconduct. The procedures must include an equal opportunity for both parties to present witnesses and other evidence and the same appeal rights;

e. Failing to use a preponderance of the evidence standard to resolve complaints of sex discrimination in grievance procedures; and

f. Failing to notify both parties of the outcome of the complaint.

49. Defendant School District violated Plaintiff's Fourteenth Amendment right to equal protection by failing to properly train and supervise its employees as to these mandated investigative requirements.

50. Defendants' actions and lack of actions were the proximate cause of Plaintiff's emotional distress and psychological damage, and his character and standing in his community have suffered from the harassment fostered as a result of Defendant School District's deliberate indifference to his right to equal protection under the Fourteenth Amendment.

COUNT III NEGLIGENCE AS TO DEFENDANT OLYMPIA SCHOOL DISTRICT

51. Amanda Jackson permitted her son, J.J., to play basketball for the District, relying on the Defendant Olympia School District and its employees, to provide a reasonably safe environment for the education of her child, and to protect her child's physical and mental well-being during school activities. At all times material, Defendant Olympia School District, through its employees, assumed a duty of care for the safety and well-being of J.J., stood in loco parentis to its students and, as such, had a duty to protect J.J. from assaults including sexual assaults while J.J. participated in District activities.

52. Defendant Olympia School District had physical custody of J.J. during the school activities at all times relevant, including the time period when J.J. was assaulted by teammates. Defendant Olympia School District, through its employees, owed Plaintiffs an enhanced duty to protect J.J. while he was in its care under a school-student relationship. The Defendant Olympia School District owed a duty to protect J.J. from physical harm, including sexual assaults, while engaged in school activities.

53. Defendant breached its duty and was negligent in the supervision and the protection over its students during school hours. Defendant failed to keep students safe from the foreseeable dangers it created when it left children unsupervised and allowed hazing to occur. The dangers of unsupervised children and hazing were especially foreseeable given that the Defendant Olympia School District knows hazing is a danger to be prevented, especially in sports programs, and it previously became aware of hazing and the inappropriate touching of young students in the Capital High School sports programs.

54. Defendants failed to use reasonable care to protect students from the harmful actions of other students when it failed to properly supervise and train its agents, employees, and students, who observed or became aware of episodes of inappropriate hazing behavior.

55. Defendant District, through its employees, including Capital High School coaching staff, violated its statutory duty set forth in RCW 28A and elsewhere, in failing to maintain good order, safety, and discipline at Olympia School District.

56. The above-mentioned acts and omissions by Defendant Olympia School District increased the risk of harm to minors, and put them in a position of increased danger.

57. Defendants was grossly negligent, or in the alternative, negligent, in the supervision, control, protection, and care of the pupils entrusted to it, including but not limited to, in failing to act with reasonable care to protect its children from harm and failing to train its employees to recognize and prevent such harm from occurring.

58. Defendant's negligence and violation of its statutory duty were a proximate cause of injury and damage to J.J. and his mother, Amanda, including physical and mental pain, suffering, and anguish.

VI. RESERVATION OF RIGHTS

59. Plaintiffs reserve the right to assert additional claims as may be appropriate following further investigation and discovery.

VII. JURY DEMAND

60. Under the Federal Rules of Civil Procedure, Plaintiffs demand that this action be tried before a jury.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. That the Court award Plaintiffs appropriate relief, to include all special and general damages established at trial;

B. That the Court impose punitive damages under any provision of law under which punitive damages may be imposed;

C. That the Court declare the failure to have policies, procedures, and practices in place to report, prevent, and deter sexual hazing by students was tortious and unconstitutional, and deprived Plaintiff of his rights under the Fourteenth Amendment to the United States Constitution;

D. That the Court grant Injunctive relief requiring Defendant School District to take effective steps to prevent sex-based harassment and hazing, including sexual assault, in its education programs; fully investigate conduct that may constitute sex-based harassment and /or sexual assault and /or hazing; appropriately respond to all conduct that may constitute sex-based harassment and /or sexual assault and /or hazing; and mitigate the effects of harassment and /or sexual assault and /or hazing, including by eliminating any hostile environment that may arise from or contribute to it

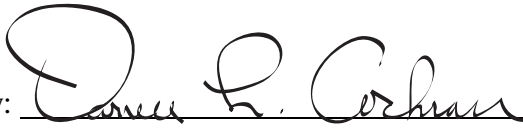
E. That the Court award Plaintiffs such other, favorable relief as may be available and appropriate under law or at equity;

F. That the Court award costs, reasonable attorneys' fees, and statutory interest under any applicable law or ground in equity; and

G. That the Court enter such other and further relief as the Court may deem just and proper.

SIGNED this 22nd day of January, 2016.

PFAU COCHRAN VERTETIS AMALA PLLC

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